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*__IN THE HIGH COURT OF DELHI AT NEW DELHI__

% *DATE OF DECISION*: July 03, *2012*

\+ CRL.REV.P. 322/2004

RAI BAHADUR CHOUDHRY RUCHI RAM KHATTAR & SONS ..... Petitioner
Through: Mr.B.D.Batra, Advocate.

versus

THE STATE .... Respondent
Through: Ms.Rajdipa Behura, APP.

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J (ORAL)

1. Challenge in this revision petition is to the order dated 20.05.2004 passed by the learned Addl. Sessions Judge in Crl. Appeal No.178/2002 whereby the impugned order dated 03.07.2002 passed by the learned M.M. convicting the firm and two partners was modified to the extent that the two partners were acquitted by the learned Addl. Sessions Judge holding that the pleadings to this effect in the complaint are not supported by evidence and in the absence of any evidence, it shall be improper to hold appellants No.2 & 3 guilty. The findings to this effect recorded by the learned M.M. were accordingly set aside. However, the firm was convicted and invoking provisions of Section 25(1) of the Contract Labour

(Abolition & Regulations) Act, 1970, the two partners Rajeev Khattar and Vikram Khattar were held vicariously liable to undergo conviction for the firm M/s. Rai Bahadur Choudhry Ruchi Ram Khattar & Sons and sentenced to undergo rigorous imprisonment for one month each, besides a fine of ₹ 1,000/- each for all the offences i.e. in all, a fine of ₹ 11,000/-, in default of payment of fine to further undergo simple imprisonment for 7 days.

2. The contention of counsel for the revisionist is that once the Court has given a finding to the effect that in the absence of any evidence to support the pleadings in the complaint, it shall be improper to hold appellants No.2 and 3 guilty, then how with the aid of Section 25(1) of the said Act they could be convicted under that Section which is not even penal in character.

3. I have heard learned counsel for the revisionist and learned APP for the State and gone through the impugned judgment.

4. There is apparent contradiction in the finding returned by the learned Addl. Sessions Judge while disposing of the criminal appeal. The relevant portion of the impugned order needs to be extracted to bring on record the contradictory finding resulting in grave miscarriage of justice to the petitioners No.2 & 3.

> *"As per prosecution case, the appellant No.1 is the firm and appellants No.2 and 3 are its partners.*

I have gone through the statements of the sole prosecution witness PW1 Mrs.Roopa Bharat. It has not been deposed by the witness that appellants no.2 and 3 were responsible for the day to day business and affairs of the company. Thus, the pleadings to this effect in the complaint are not supported by evidence. In the absence of any evidence to this effect, it shall be improper to hold appellants no.2 and 3 guilty. The finding to this effect thus, recorded by the ld. trial court, is set aside. Appellants no.2 and 3 are acquitted and the appeal to that extent is allowed."

5. Then in the concluding paragraph, the learned Addl. Sessions Judge has come to the following conclusion:-

"From the evidence and material on record, it is established that Rajiv Khattar and Vikram Khattar, were the partners of the appellant company. They were in charge and responsible for the conduct of its business at the time of commission of offence. Thus, they are liable to be proceeded against and punished for the offence committed by the company. They have not proved that the offence was committed without their knowledge or that they exercised all due diligence to prevent the commission of such offence. Thus, invoking the provisions of Section 25(1) of the Act, the order on sentence dated 3.7.2002, is modified. Rajiv Khattar and Vikram Khattar on behalf of the company, are vicariously held liable to undergo conviction for the firm M/s. R.B.Choudhary Ruchi Ram Khattar and Sons and shall undergo Rigorous Imprisonment for one month each, besides a fine of ₹ 1,000/- each, for all the 11 offences i.e. in all, a fine of ₹ 11,000/-, in default of payment of fine, Simple Imprisonment for 7 days. Trial Court Record be sent back along with a copy of the order. Appeal file be consigned to Record Room".

6. The learned Addl. Sessions Judge has returned the finding that there is no evidence to support the pleadings in the complaint to the effect that the appellants No.2 and 3 were

responsible for conduct of day-to-day business of appellant No.1-firm and thereby acquitted them. It is just not understandable as to how without there being any material on record, the learned ASJ could have arrived at the conclusion that the two partners Rajeev Khattar and Vikram Khattar were In-charge and responsible for conduct of day-to-day business of the firm at the time of commission of the alleged offence and thereby holding them vicariously liable to undergo sentence for the firm.

7. Learned APP for the State submits that acquittal of petitioners No.2 & 3 has not been challenged by the State and thus the same has attained finality.

8. In view of the finding returned by the learned ASJ to the effect that in the absence of any evidence that the petitioners No.2 and 3 were responsible for day-to-day business of the company, the order sentencing them to undergo imprisonment for one month each, is patently illegal and impugned order to that extent holding petitioners No.2 & 3 vicariously liable being perverse has to be set aside.

9. Learned counsel for the petitioners submits that petitioner No.1 (the firm) is not challenging its conviction and the same may be maintained and the fine which already stands paid may be treated as fine paid by the firm and the substantive sentence imposed upon the partners may be waived.

10. Learned APP for the State submits that in view of the acquittal of the two partners i.e. petitioners No.2 & 3, which has not been challenged by the State, they could not have been sentenced to undergo imprisonment for conviction of the firm and to that extent the impugned order may be modified. Learned APP for the State has relied upon the report ***AIR 2005 Supreme Court 2622 Standard Chartered Bank and others v. Directorate of Enforcement and others*** wherein it was held that there is no immunity to companies from prosecution merely because it is in respect of offences for which punishment of imprisonment is mandatory. In such cases in lieu of imprisonment fine can be imposed. Relying upon the said decision, she submits that the order on sentence imposed upon the firm may also be accordingly modified.

11. Taking into consideration the fact that after acquittal of petitioners No.2 and 3, they have been sentenced to undergo rigorous imprisonment for one month each, apart from payment of fine, on being held vicariously liable, there is manifest error on record which needs to be corrected by this Court in exercise of its revisional jurisdiction. In ***T.N.Dhakkal v. James Basnett (2001) 10 SCC 419***, it was held that the High Court has revisional jurisdiction under Section 401 Cr.P.C. and can exercise its discretionary jurisdiction to correct miscarriage of justice. This is a case where the power of revision vested in this Court has to be exercised under the exceptional circumstances referred to above, as there had

been miscarriage of justice qua the petitioners No.2 & 3 by sentencing them after holding that they were not responsible for conduct of day-to-day business of the company.

12. Thus, in the facts and circumstances, the impugned order sentencing the two partners i.e. petitioners No.2 & 3 to rigorous imprisonment for one month each is set aside. The conviction of petitioner No.1 i.e. the firm is maintained and the fine of Rs.1,000/- each paid for all the 11 offence i.e. in total Rs.11,000/- for all the offences shall be treated as fine paid by petitioner No.1-firm.

13. The revision petition is allowed in the above terms and stands disposed of accordingly with no order as to costs. Trial Court record be sent back forthwith.

PRATIBHA RANI, J

July 03, 2012
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